

REMARKS

The present invention is a card for removing a tick or blood sucking insect which is bitten into or bored down into the skin of a person or animal. The card in accordance with a preferred embodiment comprises a slit 36, 50 or 54 for use in removing the tick or insect. The card may be of a size corresponding to a credit card for keeping in a wallet, pocket or bag. The card is relatively stiff for permitting removal of the tick or the blood sucking insect and includes a corner with the slit for removing the tick or the blood sucking insect.

The Examiner correctly points out the error in paragraph [0021] of the Substitute Specification regarding Fig. 5. Paragraph [0021] has been amended to change the reference from Fig. 5 to Fig. 2 to improve its form for reexamination.

Claims 5-7 and 14-20 stand rejected under 35 U.S.C. §102b as being anticipated by United States Patent 5,645,500. The Examiner reasons as follows:

A tool is disclosed in figure 1 that forms a card of a size corresponding to a credit card for keeping in a wallet, pocket or bag, see col. 3, lines 4 and 5. The tool is made relatively stiff and includes a slit defined by beveled arch 30. The recitation drawn to the tool for use in removing a tick or blood sucking insect, which has bitten or bored down into the skin of a person or animal is a matter of intended use that does not define over the tool of Borden. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The tool of Borden figure 1 additionally has a corner area with a flexible finger 16 with a slit 30 at an outer end. The recitation drawn to the slit for removing the tick or blood sucking insect is a matter of intended use that does not distinguish over the structure of Borden.

Moreover, in the Response to Arguments, the Examiner says as follows:

Applicant's arguments filed December 26, 2006 have been fully considered by they are not persuasive. It is not agreed that giving weight to the functional recitation of the structure for removal of the tick or blood sucking insect in claims 5 or 14 renders the subject matter of these claims novel. Based upon the intended use recited there is no way to distinguish the pending claims from a card having the structural features recited.

The tool of Borden represents a card in that the tool is a flat member 12 three inches long by 1¼ inches wide, col. 3, lines 4 and 5. This represents a size corresponding to a credit card for keeping in a wallet, pocket or bag. Moreover, in the corner areas of the body 12 there is provided a slit at 60 and a finger 16 which is provided with a slit 30. The present invention provides for removing a tick or blood sucking insect by placing the card between the insect and the skin to lift the insect from the infected area. There is nothing implied by this use that is anything different over the tool of Borden where one can manifestly place the any of the tool edge structures between the tick or blood sucking insect and the infected area. If any differences exist they are not recited in the pending claims to which Borden is applied. The prior reference can not simply be dismissed on the basis that it is for a different purpose. Applicant's view of the intended use in this capacity ignores the structural similarities and functional overlap of the respective disclosures. Accordingly, the rejection has been maintained.

The rejection is traversed for the following reasons.

For an anticipation rejection to be appropriate, every limitation of the claim must be literally present or inherently present in the reference. When this criteria is applied, none of the claims of the present application which have been rejected are anticipated.

With respect to claim 5, it should be noted that, in addition to the use of removing a tick or blood sucking insect, the card is structurally defined as "being of a size corresponding to a credit card and for keeping in a wallet, pocket or bag" and "including a corner area with a slit, for removing the tick or blood sucking insect, which has been bitten into or bored down into the skin of a person or an animal". In the first place, the present application teaches the

dimensions of a standard credit card in paragraph [0016] to be about 85 mm in length, about 45 mm in width and a thickness of less than 4 mm which correspond respectively to 3.346 inches, 2.126 inches and .1574 inches.

Borden's tool is stated to have a length of 3 inches. Therefore, Borden's length, when the length of the projection of parts 14 and 16 is subtracted from the to be length of 3.35 inches, is nominally $2\frac{1}{2}$ inches long. Accordingly, the limitation "the card being of a size corresponding to a credit card" is not met since the length of a standard credit card being about 3.346 inches which is about an inch longer than the length of the tool of Borden.

The width of Borden's tool is stated to be approximately $1\frac{3}{4}$ inches which is about $\frac{3}{8}$ inch narrower than the dimensions of the standard credit card as taught in the specification.

Therefore, the length and width are not about 85 mm in length and 54 mm in width as taught in paragraph [0016] of the specification.

Moreover, the thickness of the golfer's tool shown in Fig. 2 is the sum of the projection of parts 14 and 16 extending at an angle approximately $\frac{7}{8}$ inch below the main portion 18 and tee indentations 38 and 40 extending opposite in direction to the projections of parts 14 and 16. Indentations 38 and 40 are described at column 4, lines 11-37. In column 3, lines 19-22, it is taught the "[I]eg 14 extends downwardly approximately one-half of its length [$\frac{7}{8}$ inch] before angling gently upwardly at less than a 45° (45) deuce angle from the generally flat body 12 and main portion 18." When these two dimensions are added together, which extend in opposite directions as is apparent from Fig. 2, it is clear that the thickness is substantially greater than the thickness of about 4 mm as taught in the specification of a standard credit card.

Therefore, the limitation of claim 5 of "the card being of a size corresponding to a credit card" is not met.

The Examiner has not cited any portion of the golf tool of Borden meeting the limitation of "a corner area with the slit, for removing the tick or the blood sucking insect, which has been bitten into and bored down into the skin of a person or animal." Clearly, the dimensions of any openings in Borden's tool, such as 24, 30, 48, 60 and 70, would not meet the slit limitation regarding its claimed function since the openings are too large to be readily usable for tick or other insect removal.

Accordingly, claims 5-7 are not anticipated as contended by the Examiner.

If the Examiner persists in the stated grounds of rejection, it is requested that he point out on the record how the foregoing dimensions of Borden correspond about to those of a credit card as disclosed.

Moreover, claim 14 recites a corner area of the card with "means for removing a tick or a blood sucking insect". As a sixth paragraph, section 112 claim limitation, the function of the cover area of the card must be given weight. The Examiner cannot point to anything explicit or inherent in Borden that suggests a card for removal of ticks or other insects. As noted above, the dimensions of any indentation 24, 30, 48, 60 and 70 are not suitable for the removing of ticks. Accordingly, claims 14-20 are not anticipated by Borden.

If the Examiner persists in the stated grounds of rejection, it is requested that he point out on the record how Borden corresponds to the claimed invention including "a corner area of the card with means for removing a tick or a blood sucking insect". The functional language in means plus function claim 14 must

be given weight by the Examiner which the Examiner has not done. In the context of the means plus function limitation in claim 14, the Examiner's contentions of "intended use" are not relevant. It is the Examiner's burden to prove that the area 30, which the Examiner contends is the slit in Borden, is useful as understood by a person of ordinary skill in the art for the removal of ticks and other blood sucking insects.

In view of the foregoing amendments and remarks, it is submitted that each of the claims in the application is in condition for allowance. Accordingly, early allowance thereof is respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (142.43482X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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Attachments

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